



Department of Justice

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JUSTICE DEPARTMENT REQUIRES MODIFICATION OF JDS UNIPHASE'S ACQUISITION OF E-TEK

WASHINGTON, D.C.-- The Department of Justice today announced that it will require JDS Uniphase Corporation and E-TEK Dynamics Inc.--two leading manufacturers of components for fiber optic communication networks--to sell their rights to purchase a key input to fiber optic components in order to resolve the Department's antitrust concerns involving their proposed \$15 billion merger. The Department said the deal as originally proposed would have likely resulted in a reduction of supply or increased prices for dense wavelength division multiplexers (DWDMs), used in communication networks.

The Department's Antitrust Division filed a lawsuit today in U.S. District Court in San Francisco to block the proposed transaction. At the same time, the Department filed a consent decree that, if approved by the court, would resolve the lawsuit and the Department's competitive concerns.

DWDMs separate the light in a fiber optic strand into multiple wavelengths, or colors, with each wavelength capable of carrying a separate communications channel. DWDMs, which are used in fiber optic systems to transmit voice, data and multi-media over long distances, enable the simultaneous transmission of multiple channels on a single strand of fiber, increasing that network's total transmission capacity. Thin film filters are critical components at the core of

DWDMs produced by JDS and E-TEK. Thin film filters are made in a vacuum chamber by coating pieces of polished glass with thin alternating layers of material.

Prior to the proposal, E-TEK had supply contracts with several vendors of thin film filters. The Department said E-TEK's in-house production and supply contracts, combined with JDS's in-house production of thin film filters, would have resulted in the two companies' controlling approximately 80 percent of the world's output of thin film filters. Today's agreement requires the parties to cancel certain contract rights to purchase thin film filters, which, according to the Department, are in short supply, affecting the ability of other producers to compete.

"The relief obtained was necessary to ensure competition in a critical input for the nations' communications networks," said Joel I. Klein, Assistant Attorney General in charge of the Antitrust Division. "Without the modification required by the decree, telecommunications companies would have faced reduced output and higher prices for DWDMs, an important component to their fiber optic networks."

According to the complaint, JDS Uniphase and E-TEK compete to sell DWDMs to telecommunication equipment manufacturers who incorporate the DWDMs into fiber optic systems, and then sell those systems to telecommunications carriers. The Department said the proposed transaction would have resulted in the combined company accounting for approximately 70 percent of the world market for DWDMs with 16 or fewer channels. In addition, the Department said alternative sources to JDS and E-TEK for DWDMs have been producing at or near their capacity, in significant part because of restrictions in their access to thin film filters.

Under the terms of the consent decree, the merged firm must modify certain contractual rights in supply agreements it holds with several thin film filter suppliers. Specifically, the consent decree prohibits the merged firm from enforcing its rights of first refusal on thin film filters

manufactured by merchant suppliers, prohibits the merged firm from enforcing its contractual rights of repayment for money E-TEK advanced to those merchant suppliers and prohibits the merged firm from enforcing its security interests in coating chambers on the premises of those merchant suppliers. In addition, the consent decree also prohibits the merged firm from reacquiring any right of first refusal over any coating chamber on the premises of those merchant suppliers for a period of three years.

JDS Uniphase is headquartered in San Jose, California. For its 1999 fiscal year, its net sales were approximately \$282.8 million. E-TEK, also headquartered in San Jose, had 1999 net sales of approximately \$172.7 million.

As required by the Tunney Act, the proposed consent decree will be published in the Federal Register, together with the Department's competitive impact statement, which will also be filed with the Court. Any person may comment on the proposed decree by submitting comments to the Department. After a 60-day comment period, the United States will reply to any public comments and seek entry of the decree by the Court. At the conclusion of the 60-day comment period, the court may enter the consent decree upon its finding that it serves the public interest.

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